

### **REMARKS**

In the above-mentioned, Office Action, all of the pending claims, claims 1, 4, 5, 7, 9-20, 22, 23, 27-32, 36, and 37, were rejected. The claims were rejected over the combination of Park (WO 00/08706), Ue (US Patent 6,487,394), and Persson (US Patent 6,028,851).

In the rejection of the claims, the Examiner acknowledged that Park fails to disclose evaluation of a signal to noise ratio and a desired signal component value but relied upon Ue for disclosing these features. And, the Examiner further acknowledged that neither Park nor Ue disclose a desired signal component value transmitted from a mobile station. But, the Examiner relied upon Persson for disclosing this feature.

In response, independent claims 1, 17, 36, and 37 have been amended, as set forth herein, in manners believed better to distinguish the invention of the present application over the cited combination of references.

The Examiner should reconsider the final rejection and allow the claims for one or more of the following reasons:

1. The claim amendments distinguish the claimed subject matter from the cited references.
2. The cited references fail to disclose or suggest all elements of the claims.
3. The Examiner has applied a legally erroneous basis for combining elements from disparate references.

**1. The Amendments Make the Claims Patentable.**

The amendments now clearly distinguish the claimed subject matter from the cited references. Further, because of the history of examination of this matter, no new search ought to be required.

With respect to exemplary claim 1, the recitation of the sending of the second signal from the mobile device to the base station is amended, further to state that the second signal contains a desired preamble signal component SNR value desired by the mobile device, wherein the desired preamble signal is based on signal processing capabilities of the mobile device, to optimize a network performance criteria based upon current network conditions including at least one of interference, fading, and unbalanced RF, radio frequency links. Claims 17, 36, and 37 are analogously amended.

Support for the amendments is found in the disclosure, e.g., on page 5, lines 25-30, which states that the desired preamble value for the mobile device may be based on signal processing capabilities of the mobile device.

Additionally, the recitation of the setting of the transmit power by the base station is amended, further to state that an offset value is used to determine the transmit power. The offset value being based on at least one of an estimation error associated with estimating the value of a signal component of said first signal and changes in network conditions since the mobile device transmitted the signal to noise ratio information to the base station. Claims 17, 36, and 37 are analogously amended.

Support for the amendments is found in the disclosure, e.g., on page 4, lines 16-30, and page 5, lines 1-20, which states the offset may be estimation error value or value to compensate for changes in channel conditions since the mobile device communicated the signal to noise value and can be added to the estimated signal component value and desired preamble value to determine the initial transmit power of the preamble.

**2. The Cited References Fail to Disclose or Suggest All Elements.**

To make a prima facie case under section 103, the Examiner's burden includes (but is not limited to) citing references that teach or suggest all of the features of a claimed invention. E.g., In re Ochiai, 71 F.3d 1565, 1572 (Fed. Cir. 1995). If the references fail to teach or suggest one or more elements, the Examiner's prima facie case is flawed for failing to meet this legal standard.

Without waiving previous arguments that the Examiner has failed to produce evidence disclosing or suggesting all elements, the Applicants submit that the cited references fail to disclose or suggest all elements of the claims as amended in one or more of the following respects.

a. "Network performance criteria based upon current network conditions"

The Examiner relied upon Park for showing determination of a desired signal value for a signal component to optimize a network performance criteria based upon current network conditions including interference, fading, or unbalanced RF links on page 5, lines 13-16, page 5,

line 25 - page 6, line 5, page 7, line 24 – page 8, line 4, page 10, line 19, page 11, lines 11-14, page 12, lines 3-9, and page 14, line 6-9.

Neither the cited, nor other, portions of Park disclose or suggest that a desired signal value for optimizing network performance is based upon current network conditions and the signal processing capabilities of the mobile device. The Examiner equates Park's measuring of the pilot strength, which is based on factors of interference, fading, etc., with determining a desired preamble signal to optimize network performance based on current network conditions. The Applicants assert that simply measuring the channels' pilot signal cannot be equated to providing a desired preamble signal desired by the mobile device, wherein the desired preamble signal is based on signal processing capabilities of the mobile device, for optimizing network performance.

b. “Setting the transmit power” and “offset.”

The Examiner further relied upon Park for showing setting the transmit power of the forward link preamble signal by adding the difference between the desired preamble signal component signal-to-signal noise ratio value and the estimated signal component value to the first transmit power on page 14, line 3 – page 15, line 7.

The Applicants further assert that Park also fails to disclose or suggest a desired preamble signal of the mobile that is based on signal processing capabilities of the mobile device. Park merely discloses using an original pilot transmission value plus the difference between a required signal to noise ratio value, which required signal to noise ratio value meaning the amount of energy required for a new channel, and a measured signal to ratio value of the pilot signal to

determine an initial transmission power. Park fails to disclose or suggest using a desired preamble signal desired by the mobile, wherein the desired preamble signal is based on signal processing capabilities of the mobile device. In addition, Park also fails to disclose or suggest adding to the difference of the desired preamble signal and the estimated signal component value an offset, wherein the offset includes an offset for at least one of an estimation error for the estimating the value of the signal component and channel condition changes since the mobile device transmit information about the received signal to noise ratio.

The Examiner further noted that Ue would similarly also be relevant. But Ue similarly also fails to disclose the sending by a mobile device of a signal containing a desired preamble signal component SNR value desired by the mobile device based on the processing capabilities of the device to optimize a network performance criteria based upon current network conditions including at least one of interference, fading, and unbalanced RF links. In addition, Ue also fails to teach the addition of the offset to the calculation of the difference of the desired preamble signal and estimated signal component to determine the transmit power.

And, Persson relied upon by the Examiner for showing transmission of a desired component signal to noise ratio value based on mobile device signal processing capabilities to optimize a network performance criteria based upon current network conditions also fails to disclose optimization of a network performance criteria based upon current network conditions including interference, fading, or unbalanced RF links. The cited portion of Persson, column 6, lines 60-column 7, lines 65 discloses an established SIR for a quality of service desired by a mobile station based on maximum limitations of the base transceiver station and discloses

calculations performed by a mobile station. But, Persson fails to disclose or suggest optimization based upon interference, fading, or unbalanced RF links, as now-recited. In addition, Persson fails to disclose or suggest the addition of the offset to the calculation of the difference of the desired preamble signal and estimated signal component to determine the transmit power.

As none of the cited references disclose this feature, the Applicants assert that no combination of the cited references can be formed to create the invention of the independent claims, as now-presented.

Because the remaining dependent claims include all of the recitations of their respective parent claims, the dependent claims are believed to be patentably distinguishable over the cited combination for the same reasons as those given with respect to their parent claims.

### **3. No Valid Rationale for Combining Elements.**

For the reasons previously discussed, one skilled in the art having the cited references could not combine their elements to reach the claimed subject matter, regardless of what impetus there may have been to combine them.

The Examiner's rejections are erroneous because the proffered rationales for combining elements from the cited references are legally and factually erroneous.

#### **a. The references must "clearly and particularly" lead to combination.**

Any rationale for picking and choosing elements from disparate references must be supported by articulated reasoning, In re Kahn, 441 F.3d 977, 988 (Fed. Cir. 2006), and should

“clearly and particularly” lead one of ordinary skill in the art to make the claimed combination  
Ruiz v. A.B. Chance Co., 234 F.3d 654, 660 (Fed. Cir. 2000).

Thus, an illogical rationale is not a proper rationale, because it is not supported by reasoning. Further, a rationale that is vague or tautological is not a valid rationale, because it does not “clearly and particularly” lead one of ordinary skill in the art to make a particular combination.

b. The Examiner’s rationales are not logical, clear and particular.

In this case, the Examiner’s proffered rationales are illogical and vague. The Examiner’s proffered rationales for looking to different references are very general (“reduce interference and increase performance” and “reduce interference and improve system performance”). This is little more than saying that one skilled in the art would have reason to add elements to the primary reference to make it better.

More importantly, the Examiner has not shown that the elements that would be taken from the secondary references actually contribute to the benefits that would supposedly result. In other words, one skilled in the art would not have reason to select a feature from a reference to achieve a stated benefit unless the evidence shows that that feature leads to that benefit. The Examiner has made no effort to prove any connection between the combination of selected elements and the stated benefits.

And of course, the burden of proof is on the Examiner.

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Accordingly, in light of the foregoing, independent claims 1, 17, 36, and 37, and the dependent claims dependent thereon, are believed to be in condition for allowance. Accordingly, reexamination and reconsideration for allowance of the application respectfully requested. Such early action is earnestly solicited.

Respectfully submitted,

/ Robert H. Kelly /

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Robert H. Kelly  
Reg. No. 33,922

KELLY & KRAUSE, L. P.  
6600 LBJ Freeway, Suite 275  
Dallas, Texas 75240  
Telephone: (214) 446-6684  
Fax: (214) 446-6692